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**TETRA PAK US INTELLECTUAL PROPERTY DEPARTMENT**

**TETRA PAK INC.**

**101 CORPORATE WOODS PARKWAY  
VERNON HILLS, IL 60061**

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**FEB 04 2005**

**OFFICE OF PETITIONS**

In re Application of	:	
Lees et al.	:	
Application No. 10/787,032	:	ON PETITION
Filed: February 24, 2004	:	
Attorney Docket No. TRX-0628 CON01	:	

This is a decision on the petition filed October 12, 2004, requesting that the above-identified application be accorded a filing date of February 24, 2004, rather than the presently accorded date of February 25, 2004. The petition is properly treated as a petition under 37 CFR 1.10(d).

The petition is **DISMISSED**.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are NOT permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.10." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

37 CFR 1.10(d) states,

Any person filing correspondence under this section that was received by the Office and delivered by the "Express Mail Post Office to Addressee" service of the USPS, who can show that the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS was incorrectly entered or omitted by the USPS, may petition the Commissioner to accord the correspondence a filing date as of the date the correspondence is shown to have been deposited with the USPS, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date based upon an incorrect entry by the USPS;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail"; and
- (3) The petition includes a showing which establishes that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day. Any showing pursuant to this paragraph must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the "Express Mail Post Office to Addressee" service of the USPS.

As to (3), petitioner has failed to include any evidence from the USPS that the correspondence was deposited in the "Express Mail Post Office to Addressee" service on February 25, 2004. Evidence may wish include a true copy of the "Express Mail" mailing label and a copy of the USPS Track & Confirm record, which states the exact date, time and location that the package in question was accepted.

A petition under 37 CFR 1.10 does not require a petition fee. Accordingly, the \$130.00 submitted with the instant petition will be credited to petitioner's deposit account as authorized.

The file does not indicate a change of address has been submitted, although the address given on the petition differs from the address of record. If appropriate, a request to change the address of record should be filed. A courtesy copy of this decision is being mailed to the address given on the petition; however, the Office will mail all future correspondence solely to the address of record.

Further correspondence with respect to this matter should be addressed as follows:

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By fax:                     (703) 872-9306  
                                  ATTN: Office of Petitions

Telephone inquiries concerning this matter may be directed Paralegal Liana Chase at (571) 272-3206.



Charles Steven Brantley  
Petitions Attorney  
Office of Petitions

cc:    MITCHELL J. WEINSTEIN  
         WELSH & KATZ, LTD.  
         120 SOUTH RIVERSIDE PLAZA  
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         CHICAGO, IL 60606

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**REQUEST FOR PATENT FEE REFUND**

1 Date of Request: 2/2/05      2 Serial/Patent # 10787032

3 Please refund the following fee(s):		4 PAPER NUMBER	5 DATE FILED	6 AMOUNT
	Filing			\$
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✓	Petition	Pet.	10/12/04	\$ 130.00
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7 TOTAL AMOUNT OF REFUND \$ 130.00

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	Treasury Check
✓	Credit Deposit A/C #:
✓	9 <u>23--0920</u>

10 REASON:

Overpayment

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No Fee Due (Explanation):

No petition fee was required.

11 REFUND REQUESTED BY:

TYPED/PRINTED NAME: J. Chase

TITLE: Paralegal

SIGNATURE: J. Chase

PHONE: 972-3206

OFFICE: Patent

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APPROVED: W. Hall

DATE: 2/4/05

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